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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
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11 PAUL L. PIPITONE,  
12 Plaintiff,  
13 v.  
14 DEPUTY MATTHEW  
15 BARKSDALE,  
16 Defendant.

Case No. 2:24-cv-04072-PSG-AJR

**ORDER DISMISSING SECOND  
AMENDED COMPLAINT WITH  
LEAVE TO AMEND (DKTS. 15-16)**

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18 **I.**

19 **INTRODUCTION**

20 On May 15, 2024, Plaintiff Paul L. Pipitone (“Plaintiff”), proceeding *pro se*,  
21 filed a Complaint (the “Complaint”) against the following defendants in their  
22 individual and official capacities: (1) Deputy Matthew Barksdale; (2) Deputy  
23 Nicholas Anthony; (3) Deputy Luke Rittinger; (4) Deputy Bernard; (5) Deputy  
24 Chris Langston, Sergeant; (6) San Luis Obispo County Sheriff Ian Parkinson; (7)  
25 Assistant District Attorney Ashley Cervera; and (8) “John Does & Jane Roes I-V.”  
26 (Dkt. 1.) On May 23, 2024, the Court screened the Complaint and issued an order  
27 dismissing the Complaint with leave to amend. (Dkt. 6.) On August 2, 2024,  
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1 Plaintiff filed First Amended Complaint (“FAC”) that named the same defendants  
2 as the initial complaint and added three new defendants: (1) M. Conde, supervisor  
3 of the San Luis Obispo County Sheriff Records Department; (2) Jenn Mebane,  
4 training supervisor at the SLO County Sheriff’s office; and (3) San Luis Obispo  
5 County Superior Court Judge Jesse Marino. (Dkt. 12 at 12.) On August 26, 2024,  
6 the Court dismissed Plaintiff’s FAC with leave to amend and directed Plaintiff to  
7 file a Second Amended Complaint (“SAC”). (Dkt. 14.) Plaintiff’s FAC was  
8 dismissed in part on the basis that Plaintiff’s ongoing criminal proceedings  
9 implicated the Younger abstention doctrine. (Dkt. 14 at 4.) Those proceedings  
10 now appear to have concluded.<sup>1</sup>

11 On September 24, 2024, Plaintiff filed a SAC which names San Luis Obispo  
12 County Deputy Sheriff Matthew Barksdale as the sole defendant. (Dkt. 15 at 2.)  
13 On September 29, 2024, Plaintiff filed a “Corrected Second Amended Complaint”  
14 which appears identical to the SAC filed on September 24, 2024. (Dkt. 16.)  
15 Plaintiff’s SAC alleges claims under 42 U.S.C. § 1983, 42 U.S.C. § 1985 and 42  
16 U.S.C. § 1986. (Dkt. 15 at 2.) For the reasons discussed below, the Court  
17 DIMISSES both versions of the SAC for failure to state a claim upon which relief  
18 can be granted, but grants Plaintiff leave to amend.

## 19 II.

### 20 STANDARD FOR DISMISSAL OF *PRO SE* COMPLAINT

21 Under Federal Rule of Civil Procedure 12(b)(6), a trial court may dismiss a  
22 claim *sua sponte* “where the claimant cannot possibly win relief.” Omar v. Sea-  
23 Land Serv., Inc., 813 F.2d 986, 991 (9th Cir. 1987); see also Baker v. Dir., U.S.  
24 Parole Comm’n, 916 F.2d 725, 726 (D.C. Cir. 1990) (*per curiam*) (adopting the  
25 Ninth Circuit’s position in Omar and noting that such a *sua sponte* dismissal “is  
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27 <sup>1</sup> See <https://www.slo.courts.ca.gov/online-services/online-case-lookup>, Search  
28 Case No. “21F-08456,” September 25, 2024 Sentencing.

1 practical and fully consistent with plaintiff's rights and the efficient use of judicial  
2 resources"). The Court's authority in this regard includes *sua sponte* dismissal of  
3 claims against defendants who have not been served and defendants who have not  
4 yet answered or appeared. See Abagnin v. AMVAC Chem. Corp., 545 F.3d 733,  
5 742-43 (9th Cir. 2008); see also Reunion, Inc. v. F.A.A., 719 F. Supp. 2d 700, 701  
6 n.1 (S.D. Miss. 2010) ("[T]he fact that [certain] defendants have not appeared and  
7 filed a motion to dismiss is no bar to the court's consideration of dismissal of the  
8 claims against them for failure to state a claim upon which relief can be granted,  
9 given that a court may dismiss any complaint *sua sponte* for failure to state a claim  
10 for which relief can be granted pursuant to Rule 12(b)(6)."). In civil actions where  
11 the plaintiff is proceeding *in forma pauperis* ("IFP"), Congress requires district  
12 courts to dismiss the complaint if the court determines that the complaint, or any  
13 portion thereof, (1) is frivolous or malicious, (2) fails to state a claim upon which  
14 relief can be granted, or (3) seeks monetary relief from a defendant who is immune  
15 from such relief. 28 U.S.C. § 1915(e)(2).

16 Moreover, when a plaintiff appears *pro se* in a civil rights case, the court  
17 must construe the pleadings liberally and afford the plaintiff the benefit of any  
18 doubt. See Karim-Panahi v. Los Angeles Police Dep't., 839 F.2d 621, 623 (9th Cir.  
19 1988). In giving liberal interpretation to a *pro se* complaint, the court may not,  
20 however, supply essential elements of a claim that were not initially pled. See Pena  
21 v. Gardner, 976 F.2d 469, 471-72 (9th Cir. 1992). A court must give a *pro se*  
22 litigant leave to amend the complaint unless it is "absolutely clear that the  
23 deficiencies of the complaint could not be cured by amendment." Karim-Panahi,  
24 839 F.2d at 623 (internal quotation marks omitted).

### 25 26 III.

#### 27 SUMMARY OF THE SAC'S ALLEGATIONS

28 Plaintiff alleges the following factual background in support of his claims:

1 Beginning in June 2022, Deputy Barksdale conducted “research” on Plaintiff  
2 by unlawfully using databases without authorization. (Dkt. 15 at 2.) On July 13,  
3 2022, Plaintiff was in court on a previous matter (21F-08456) and was released on  
4 his own recognizance “with terms.” (*Id.*) On July 17, 2022, Deputy Barksdale  
5 unlawfully detained Plaintiff without a warrant, reasonable suspicion, or reasonable  
6 cause. (*Id.*) Deputy Barksdale then entered private property at 1395 20th Street,  
7 Oceano, CA., 93445 and unlawfully began a four-hour search of Plaintiff, his car,  
8 and his home. (*Id.* at 3.) The search concluded with Plaintiff’s arrest. (*Id.*) On  
9 July 17, 2022, Deputy Barksdale wrote an incident report that Plaintiff attaches to  
10 the SAC as Exhibit A/1. (*Id.* at 3, 15-19.)

11 On September 9, 2022, Deputy Barksdale testified regarding the events of  
12 July 17, 2022 at a probable cause hearing in Plaintiff’s criminal proceedings. (*Id.* at  
13 3.) In July 2023, Deputy Barksdale again testified regarding the events of July 17,  
14 2022 at a suppression hearing in Plaintiff’s criminal proceedings. (*Id.* at 4.)

#### 15 16 IV.

#### 17 DISCUSSION

##### 18 A. **Deputy Barksdale Is Entitled to Witness Immunity For His Testimony** 19 **At The Probable Cause And Suppression Hearings.**

20 “Witnesses, including police officers, are absolutely immune from liability  
21 for testimony at trial.” *Lisker v. City of Los Angeles*, 780 F.3d 1237, 1241 (9th  
22 Cir. 2015). This “[a]bsolute witness immunity also extends to preparatory activities  
23 inextricably tied to testimony, such as conspiracies to testify falsely.” *Id.* (internal  
24 quotations omitted). Such immunity covers “adversarial pretrial hearings” as well.  
25 *See Holt v. Castaneda*, 832 F.2d 123, 127 (9th Cir. 1987) (“[W]itnesses who testify  
26 in court at adversarial pretrial hearings are absolutely immune from liability under  
27 section 1983 for damages allegedly caused by their testimony.”).

28 The claims pled in the SAC appear to be premised on Deputy Barksdale’s

1 testimony at pre-trial hearings that occurred in Plaintiff's criminal proceedings in  
2 September of 2022 and July of 2023. (Dkt. 15 at 4.) Thus, Deputy Barksdale  
3 would be entitled to witness immunity in this action to the extent Plaintiff's claims  
4 arise from that testimony. The same is true for any statement Deputy Barksdale  
5 made in an affidavit offered in pre-trial proceedings. See Burns v. Cnty. of King,  
6 883 F.2d 819, 822 (9th Cir. 1989) ("Under the analysis of *Briscoe* and *Holt*,  
7 Warwick is entitled to absolute immunity for the statements made in her affidavit to  
8 the court."). Accordingly, to the extent Plaintiff seeks to allege Section 1983  
9 claims against Deputy Barksdale based on the Deputy's testimony at adversarial  
10 pretrial proceedings in Plaintiff's criminal prosecution, those claims are subject to  
11 dismissal on the basis of witness immunity.

12 **B. Conditions Of Plaintiff's Release Awaiting Trial May Limit His Ability**  
13 **To Recover For Fourth Amendment Violations Under Section 1983.**

14 Plaintiff alleges that Deputy Barksdale unlawfully gathered information on  
15 him "using data[b]ases without authorization," unlawfully detained him without  
16 "reasonable suspicion," and unlawfully entered his property to conduct a four-hour  
17 search and seizure. (Dkt. 15 at 2-3.) Plaintiff is advised that to the extent he seeks  
18 to allege a Fourth Amendment claim based on events that occurred while he was on  
19 parole, probation, or supervised release, "the Fourth Amendment does not prohibit  
20 a police officer from conducting a suspicionless search of a parolee." Samson v.  
21 California, 547 U.S. 843, 857 (2006), United States v. Betts, 511 F.3d 872, 876 (9th  
22 Cir. 2007) (applying Samson to those on supervise release). Further, "[p]olice or  
23 parole officers may lawfully conduct searches of parolees or their residences  
24 without satisfying the Fourth Amendment's warrant requirement when" (1) "the  
25 parolee is subject to a provision authorizing such warrantless searches"; and (2) the  
26 searching officers "have probable cause to believe that the parolee is a resident of  
27 the house to be searched." United States v. Grandberry, 730 F.3d 968, 973 (9th Cir.  
28 2013).

1 In the SAC, Plaintiff states that he was in court on July 13, 2022 regarding a  
2 previous matter and was released on his own recognizance “with terms.” (Dkt. 15  
3 at 2.) Deputy Barksdale’s incident report states that Plaintiff had agreed on July 13,  
4 2022 to “submit upon demand of peace officer/probation officer to search of  
5 person, personal property, residence, and/or vehicle owner or being operated by  
6 defendant without warrant, with or without probable cause, any time of day or  
7 night.” (*Id.* at 17.) The allegedly unlawful searches and seizures took place on July  
8 17, 2022. (*Id.* at 2-3.) Thus, it appears that Deputy Barksdale would not have  
9 violated Plaintiff’s Fourth Amendment rights by searching his person or his  
10 residence, as long as Deputy Barksdale had probable cause to believe the residence  
11 searched belonged to Plaintiff. Deputy Barksdale’s incident report states that on  
12 July 17, 2022, Plaintiff told Deputy Barksdale that he lived in the “first bedroom on  
13 right side of the house” in question and “owned a grey car that was parked in the  
14 drive way.” (*Id.* at 17.) Thus, it is unclear how Plaintiff could claim that Deputy  
15 Barksdale lacked probable cause to believe the residence searched on July 17, 2022  
16 belonged to Plaintiff.

17 **C. Plaintiff’s Other Claims Are Subject To Dismissal.**

18 Plaintiff alleges that the events described in the SAC also violated his First,  
19 Fifth, Eighth, and Fourteenth Amendment rights. (*Id.* at 4.) However, Plaintiff  
20 does not make any factual allegations that would support a First, Fifth, Eighth, or  
21 Fourteenth Amendment claim, and therefore, to the extent Plaintiff intended to  
22 plead those claims, they are subject to dismissal. Finally, “Section 1985(3)  
23 provides no substantive rights itself; it merely provides a remedy for violation of  
24 the rights it designates.” *Great Am. Fed. Sav. & Loan Ass’n v. Novotny*, 442 U.S.  
25 366, 372 (1979). Accordingly, since Plaintiff fails to state a claim regarding  
26 constitutional violations under Section 1983, he also fails to state a claim under 42  
27 U.S.C. § 1985 and 42 U.S.C. § 1986. *See White v. Rockafellow*, 181 F.3d 106 (6th  
28 Cir. 1999) (“As no constitutional violation occurred, White also had no cause of

1 action under § 1985(3) or § 1986.”).

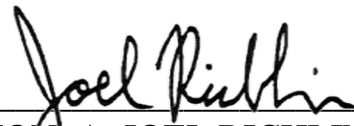
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3 **V.**

4 **ORDER**

5 Based on the foregoing, the SAC is dismissed with leave to amend. On or  
6 before **October 31, 2024**, Plaintiff shall file a Third Amended Complaint (“TAC”)  
7 that attempts to remedy the identified defects. If Plaintiff chooses to file a TAC, it  
8 should bear the docket number assigned to this case (2:24-cv-04072-PSG-AJR), be  
9 labeled “Third Amended Complaint,” and be complete in and of itself without  
10 reference in any manner to the original Complaint, the FAC, SAC, or any other  
11 document (except any document that Plaintiff chooses to attach to the TAC as an  
12 exhibit). Plaintiff is encouraged to state his claims in simple language and provide  
13 only a brief statement of supporting facts, omitting facts that are not relevant.  
14 Should Plaintiff decide to file a SAC, he is encouraged to utilize the Pro Se 15 form  
15 complaint attached to this Order.

16 **Plaintiff is explicitly cautioned that failure to timely file a TAC, or**  
17 **failure to correct the deficiencies described above, may result in a**  
18 **recommendation that this action or certain claims be dismissed with prejudice.**  
19 Plaintiff is further advised that if he no longer wishes to pursue this action, he may  
20 voluntarily dismiss the action by filing a Notice of Dismissal in accordance with  
21 Federal Rule of Civil Procedure 41(a)(1). A form Notice of Dismissal is attached  
22 for Plaintiff’s convenience.

23  
24 DATED: October 1, 2024



25 HON. A. JOEL RICHLIN  
26 UNITED STATES MAGISTRATE JUDGE

27 Attachments:

28 CV-09, Notice of Dismissal Pursuant to Federal Rules of Civil Procedure 41(a) or

1 (c).

2 Pro Se 15, Complaint for Violation of Civil Rights (Non-Prisoner), available at  
3 [https://www.uscourts.gov/forms/pro-se-forms/complaint-violation-civil-rights-non-](https://www.uscourts.gov/forms/pro-se-forms/complaint-violation-civil-rights-non-prisoner)  
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